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REPLY BRIEF FOR PETITIONER

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 907

ABRAHAM DOBKIN, *Petitioner*

v.

DISTRICT OF COLUMBIA, *Respondent*

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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1. In urging that certiorari not be granted on the first point urged by the petitioner (his statutory right to trial by jury), the District of Columbia places primary reliance upon the fact that "he [the petitioner]

failed to disclose the fact of his prior conviction for the same offense." Brief for Respondent in Opposition, p. 5. The respondent did not make this assertion in the District of Columbia Court of Appeals, and that court, apparently satisfied that the petitioner had adequately disclosed his position, decided the contention on the merits (App. 4a-5a).* The argument was made for the first time in the United States Court of Appeals for the District of Columbia Circuit, but that court, by adopting the opinion of the District of Columbia Court of Appeals as the basis for its decision (App. 7a), also went to the merits.

And indeed, both courts must have. Petitioner's request for trial by jury came first before a judge of the Court of General Sessions sitting as Motions Judge (R. 8, 10). It was clear to that judge, from what occurred during that hearing (see R. 10), that petitioner had a prior conviction for the same offense, and the courts below both impliedly so held.

The rule laid down by the District of Columbia Court of Appeals (App. 4a-5a), and that sought by the respondent, is to the effect that the prosecutor, and only the prosecutor, can invoke the multiple offender statute in the District of Columbia. This is implicit from the ruling that the fact of a prior conviction must be averred in the indictment or information (App. 5a). Left unanswered is the petitioner's question—why cannot the defendant bring his prior conviction to the attention of the court and take the chance on increased punishment in exchange for a trial by jury rather than by the court alone.

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* The reference is to the Appendix to the petition for certiorari.

2. In response to petitioner's second ground for certiorari, the respondent shows exactly what governmental interest compelled a trial on Friday night rather than Monday morning—"the government's necessary witness would be returning to her home in North Carolina beyond the jurisdiction of the court." Brief of Respondent in Opposition, p. 7. No reason is now suggested, nor was one ever suggested below, why she could not have been compelled to remain over the week end or to return. The power to do so clearly existed.

The respondent also asserts that "the trial judge conducted a hearing upon the question [i.e., the religious assertion]." Brief for Respondent in Opposition, p. 6. This "hearing" consisted in large part of questioning Jewish spectators in the courtroom, two of whom were Assistants Corporation Counsel (R. 16), as to their understanding of Jewish beliefs (R. 15-18). But religion and religious worship are personal. This Court so held just this term.

> "Moreover, it must be remembered in resolving these [exemption] problems one deals with the beliefs of different individuals who will articulate them in a multitude of ways. *In such an intensely personal area*, of course, *the claim of the registrant* that his belief is an essential part of a religious faith *must be given great weight.*" *United States v. Seiger*, ... U.S. ...., ..., 33 U.S. Law Week 4247, 4253 (Emphasis supplied).

Finally, respondent asserts that the trial date and time had been set by agreement. Brief for Respondent in Opposition, p. 6. It may be that petitioner's trial counsel agreed to the setting, but it is uncontroverted on this record that petitioner, himself, moved to object as soon as he realized that the trial had been scheduled for after sundown on Friday. (R. 20-21).

Petitioner respectfully submits that the petition for writ of certiorari should be granted.

Respectfully submitted,

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March 1965